

1 your testimony today. Right?

2 A Yes, I did.

3 Q And, were you involved prior to  
4 the Adelphia proceeding in MASN's carriage  
5 complaint against Comcast?

6 A I don't believe I was.

7 Q And you're also serving as an  
8 expert witness in an anti-trust case that's  
9 currently pending against Comcast in  
10 Philadelphia. Right?

11 A That is correct.

12 Q That's the Behrend case. Right?

13 A I guess so.

14 Q And you've submitted expert  
15 declarations in that proceeding, as well.  
16 Right?

17 A I have.

18 Q And you, obviously, appeared as an  
19 expert witness against Comcast in the NFL  
20 proceeding. Right?

21 A Yes, that is true.

22 Q In this very room.

1 A Yes.

2 Q And, of course, obviously, you're  
3 an expert witness against Comcast in this  
4 case, as well.

5 A Obviously.

6 Q Yes. And it's not -- you've also  
7 worked against several other cable companies  
8 over the years. Right?

9 A I wouldn't say several others. I  
10 was the expert -- I was MASN's expert in the  
11 dispute in Time Warner, in North Carolina  
12 involving Time Warner. That's correct.

13 Q That was -- you were an expert  
14 witness on behalf of MASN in a carriage  
15 dispute against Time Warner. Right?

16 A Correct.

17 Q And you also mentioned that -  
18 during your testimony you referred to this C-  
19 SET matter. Do you recall that?

20 A Yes, I do recall saying that.

21 Q And C-SET was another RSN in North  
22 Carolina, and you gave some testimony about

1 Time Warner's dealings with C-SET. Do you  
2 recall that?

3 A Yes. But just to be clear, I  
4 didn't -- I was not working in that matter for  
5 either party.

6 Q But you actually were upset that  
7 you didn't get a chance to get involved in  
8 that. Right?

9 A I think that C-SET, in hindsight,  
10 had a very good case, and I can't say -- I  
11 don't know if I was upset that I wasn't  
12 involved. I think they could have used some  
13 economic assistance before they were driven  
14 out of business.

15 Q You don't recall in your  
16 deposition saying that you were upset that you  
17 didn't get involved in that case.

18 A Oh, I may have used that  
19 terminology, but I can assure you that I  
20 didn't lose any sleep over it, or that I was  
21 emotionally upset that I wasn't, assuming I  
22 was fully employed, the alternative.

1           Q       And I think you testified that  
2       your prior work in matters against adverse to  
3       Comcast informs the testimony you're giving  
4       here. Right?

5           A       Both -- your witness worked  
6       against Comcast, as well, for many years on  
7       discrimination issues. Your client  
8       discriminates a lot. The fact that they  
9       discriminate a lot, I hope shouldn't be held  
10      against me. I happened to be on the other  
11      side of those cases. If they didn't  
12      discriminate so much -

13          Q       So, the answer is yes -

14          A       -- I wouldn't have that  
15      experience.

16          Q       -- to the question. The answer is  
17      yes, that your prior experience adverse to  
18      Comcast is informing the testimony you're  
19      giving about this case today.

20          A       Well, in so far as we all can  
21      observe, there's nothing held specific, but in  
22      so far as we all can observe a pattern of

1 discrimination, it informed -- that pattern  
2 informed. So, yes it informs my opinions.  
3 You cannot think about this case, in my  
4 opinion, without thinking about what Comcast  
5 has done in Philadelphia, without thinking  
6 about what Comcast tried to do in Washington.

7 Q So, the answer to my question is  
8 yes.

9 A Well, with the caveats that I just  
10 gave, yes.

11 Q Okay. Now, I think in your  
12 deposition you referred to Comcast being on  
13 the dark side. Those were your words. Do you  
14 recall that?

15 A Again, in jest. Yes, I do. Yes.

16 Q That's like out of "Star Wars" or  
17 something?

18 A Yes. It's a Star Wars reference.

19 Q And you also referred to Comcast  
20 as a recidivist discriminator. Do you recall  
21 that?

22 A Yes. In my opinion, they're

1     recidivist discriminators.

2                   JUDGE SIPPEL:   Where do you call  
3     that, in his testimony here?

4                   MR. BURKE:   In his deposition.

5                   THE WITNESS:   The deposition.

6                   MR. BURKE:   Although, I think he  
7     may have said it today, too.

8                   THE WITNESS:   I'm not sure, but it  
9     is my opinion.   I'm not going to go away from  
10    it.   That if you discriminate all the time,  
11    you are a recidivist discriminator.   I stand  
12    by it.

13                   BY MR. BURKE:

14           Q       Now, can you point to any final  
15    court determinations where a court ruled that  
16    Comcast engaged in discrimination improperly?

17           A       No, because these matters are  
18    adjudicated before the FCC.   And I can point  
19    to many FCC orders in which Comcast has been  
20    found to discriminate on the basis of  
21    affiliation.

22           Q       And what FCC orders are you

1 referring to, Dr. Singer?

2 A Starting with the Adelphia Order,  
3 following up with the 2007 Program Access  
4 Order. Those are the two that I keep in my  
5 memory.

6 Q So, it's your testimony that the  
7 FCC in the Adelphia Order determined that  
8 Comcast engaged in improper discrimination.

9 A The finding, to be precise, is  
10 that the merger, or the Comcast acquisition of  
11 Adelphia would increase Comcast's incentive  
12 and ability to engage in the very  
13 discriminatory conduct that we are all brought  
14 here today to debate.

15 Q Well, that's a very different  
16 thing, Dr. Singer. You're saying that the FCC  
17 said that Comcast had an increased incentive  
18 and ability to engage in discrimination.  
19 Isn't that different from finding that Comcast  
20 engaged in discrimination?

21 A Let me tell you what else they  
22 found in the Appendix of their -

1 JUDGE SIPPEL: Well, can you  
2 answer that question?

3 THE WITNESS: Well, I realize now  
4 that I cited -- they had many findings. The  
5 report is hundreds of pages -

6 JUDGE SIPPEL: No, no, no.

7 THE WITNESS: I'm sorry.

8 JUDGE SIPPEL: But you still  
9 didn't answer his question.

10 THE WITNESS: Sorry. If you could  
11 repeat the question, I apologize.

12 BY MR. BURKE:

13 Q Isn't there a difference between  
14 finding that a merger may increase one's  
15 incentive and ability to engage in conduct,  
16 and a determination that you've engaged in  
17 that conduct?

18 A With respect to that one finding  
19 that you're asking about, yes. But there are  
20 other findings in the report in which the FCC  
21 found, or concluded, that Comcast has engaged  
22 in discriminatory conduct in Philadelphia with



1 the result that DBS penetration was impaired,  
2 and prices were higher. They found that it  
3 was profitable for Comcast to engage in  
4 discriminatory conduct in Philadelphia in the  
5 report, and they found it again in the Program  
6 Access Order.

7 Q And wasn't there, in fact,  
8 extended litigation where the FCC ultimately  
9 upheld Comcast's decision to withhold CSN  
10 Philadelphia from DBS providers? Wasn't that  
11 ultimately upheld by the FCC?

12 A No. The FCC -- I believe the  
13 issue was challenged by one of the operators.  
14 It wasn't a decision of the FCC, it was a  
15 decision of the - you could help me out here -  
16 the U.S. -

17 Q D.C. Circuit.

18 A D.C. Circuit, so -

19 Q Appeal from the FCC order.

20 A Do you want to ask which direction  
21 the FCC was trying to take it? The FCC was  
22 trying to protect consumers, and the issue was

1 by using what's called the terrestrial  
2 loophole, is it okay for Comcast to circumvent  
3 Program Access rules. A lot of people don't  
4 like that. The FCC, in fact, just put out an  
5 order in 2007 to re-examine whether or not  
6 Comcast's flouting of the Program Access  
7 rules, by virtue of its exploitation of the  
8 terrestrial loophole, is competitive -- so, I  
9 don't think it's fair to characterize, as your  
10 question did, that the FCC is on the side of  
11 Comcast in what's going on in Philadelphia.

12 Q Let's go back. Do the FCC rules,  
13 in your mind, prohibit Comcast from engaging  
14 in the conduct that it's engaging in in  
15 Philadelphia?

16 A The current FCC rules do not bar  
17 Comcast, do not stop Comcast from engaging in  
18 the discrimination it is engaging in in  
19 Philadelphia. You're correct.

20 Q And, in fact, the FCC has upheld  
21 that conduct in the face of repeated  
22 challenges, including in the Adelphia Order,

1     itself.   Isn't that right?

2           A       Right after the Adelphia Order,  
3     they issued in 2007 a Program Access Order in  
4     which they raised the issue again, sought  
5     public comment.   I think the direction that  
6     the FCC is pushing is they would like Comcast  
7     to make that available, so that there's some  
8     competition in Philadelphia, but they realize  
9     they have this U.S. Court of - help me out -  
10    they have this legal opinion above them that's  
11    preventing them from doing that.

12          Q       Dr. Singer, what is your basis for  
13    reading the minds of the five FCC  
14    Commissioners about what they are going to do,  
15    or where they're going?

16          A       I don't think you have to read  
17    their minds.   You get to read their orders.  
18    You get to read their statements in the back  
19    of the order.   Just read the Adelphia Order,  
20    it's pretty clear they've smelled what's going  
21    on in Philadelphia, and they did not want it  
22    to happen in Washington.   Hence, the RSN

1 protections in the Adelphia Order.

2 Q So, let's get back to the  
3 question. What final determination has the  
4 FCC ever made that Comcast improperly  
5 discriminated in its distribution of RSNs?

6 A I don't know what you mean by a  
7 final determination, but they have found in  
8 the Adelphia Order, and in the subsequent  
9 Program Access order, and I'll take you right  
10 to the pages, if you give it to me, that  
11 Comcast has discriminated. And the effect of  
12 that discrimination is lower DBS penetration,  
13 higher prices. I'll show it to you in the  
14 Adelphia Order, and I'll show it to you in the  
15 Program Access order. You want to call them,  
16 you used some legal term, final determination.

17 These are findings. I call them findings in  
18 the Adelphia Order. They might not be the  
19 legal technical term that you're seeking, but  
20 when you sit down and read the language, and  
21 it's pretty clear what the Commissioners in  
22 their orders are thinking.

1           Q       Did the -- is it your testimony,  
2   and you've been giving lots of testimony about  
3   what the FCC has decided in all kinds of  
4   matters, that the FCC determined in the  
5   Adelphia case that Comcast had engaged in  
6   improper discrimination?

7           A       I think that it's fair to say that  
8   based on the findings combined in the Adelphia  
9   Order and the Program Access Order, that the  
10   FCC concluded that this discriminatory conduct  
11   has led to lower DBS penetration and higher  
12   prices, and it motivates the protections that  
13   they impose as a remedy to allow the Adelphia  
14   transaction to go forward on independent RSNs.

15                   JUDGE SIPPEL: But they let it go  
16   forward.

17                   THE WITNESS: Subject to these  
18   conditions, Your Honor. Subject to these  
19   conditions. It's important.

20                   MR. BURKE: May I approach the  
21   witness, Your Honor?

22                   JUDGE SIPPEL: I don't argue that.

1 MR. BURKE: May I approach the  
2 witness, Your Honor?

3 JUDGE SIPPEL: Yes, you may.

4 MR. BURKE: This is going to be  
5 138, and I apologize.

6 JUDGE SIPPEL: Thank you.

7 MR. BURKE: I didn't put a number  
8 on it, so -

9 JUDGE SIPPEL: Well, we can do  
10 that. I think we've only got -- okay.  
11 Anyway, this is number -- give us the number  
12 again, please.

13 MR. BURKE: Comcast 138.

14 JUDGE SIPPEL: Oh, yes, you have  
15 it there, but it's little small letters.

16 (WHEREUPON, THE DOCUMENT REFERRED  
17 TO WAS MARKED AS COMCAST EXHIBIT  
18 138 FOR IDENTIFICATION.)

19 MR. BURKE: Okay.

20 JUDGE SIPPEL: Okay.

21 MR. BURKE: My colleague is on the  
22 ball. I just missed it.

1 JUDGE SIPPEL: Okay. So, this is  
2 Comcast Exhibit 138, and it's -- go ahead.  
3 You identify it.

4 BY MR. BURKE:

5 Q Could you identify it, Dr. Singer?

6 A Sure. It is the Memorandum  
7 Opinion and Order from July 2006, and it  
8 appears to be in the Adelphia proceeding.

9 Q Okay. Show me where in this  
10 document there is a determination by the  
11 Commission that Comcast has engaged in  
12 inappropriate discrimination.

13 A Sure. Let's turn to the Appendix.  
14 Let's go to, this is where economists live,  
15 the economic appendix, if you will. It's  
16 Appendix D. Sorry, Appendix C. This might be  
17 hard. Let's see, how could I take you there?  
18 Appendix C is the rules for arbitration.

19 JUDGE SIPPEL: Well, let's start  
20 with a page number.

21 THE WITNESS: The problem is, Your  
22 Honor, they start the page numbering over

1 again.

2 JUDGE SIPPEL: Oh, well, that's  
3 all right. Give us the -

4 THE WITNESS: Okay. Appendix D.  
5 It's towards the end. This is what it looks  
6 like, Your Honor.

7 JUDGE SIPPEL: All right. Let's  
8 see. It's Appendix D?

9 THE WITNESS: Yes.

10 JUDGE SIPPEL: All right. We'll  
11 find it. I've got Appendix B, so I'm in the  
12 right ballpark. My goodness.

13 THE WITNESS: Your Honor, it's  
14 nice, we shouldn't skip over Appendix C, given  
15 how important it is, and how germane it is to  
16 this proceeding, in which they offer rules for  
17 how to adjudicate a dispute between a  
18 vertically integrated cable operator like  
19 Comcast, who was discriminating against an  
20 RSN. That's Appendix C, Modifications and  
21 Rules for Arbitration. And in that section,  
22 they actually offer an economic model that



1 shows how a vertically integrated cable  
2 operator can profit from engaging in that sort  
3 of discriminatory behavior. But let me take  
4 you to Appendix D.

5 JUDGE SIPPEL: Yes, I'm with you.

6 THE WITNESS: Okay.

7 JUDGE SIPPEL: I've got D.

8 THE WITNESS: Okay. In Appendix  
9 D, if you could turn, please, to page 3.

10 JUDGE SIPPEL: Page 3.

11 THE WITNESS: Subsection II.

12 JUDGE SIPPEL: Roman II.

13 THE WITNESS: Yes. "Estimating  
14 Consumer Responses to the Withholding of  
15 Regional Sports Programming." Now, why are  
16 they doing this? And we're going to go into  
17 the results, and what they found about  
18 Philadelphia in a second. Philadelphia shows  
19 up on the next page. They're trying to --  
20 they're laying forward the foundation for why  
21 they decided to add protections for  
22 independent RSNs as a condition of allowing

1 the merger to go forward. They needed -- in  
2 other words, they needed a theoretical model  
3 of discrimination, which is found in Appendix  
4 C, and they needed an empirical basis in  
5 support of their theoretical model, which is  
6 found in Appendix D.

7 And if I could, Your Honor, I'll  
8 take you right to the Philadelphia story  
9 that's told in econometrics. On page 4, you  
10 see they have a Philly dummy. On page 4 they  
11 say, "Philly", I'm reading towards the bottom  
12 of the page, "is an indicator variable taking  
13 on the value of 1."

14 JUDGE SIPPEL: Yes.

15 THE WITNESS: Okay. And then if  
16 you flip the page, you get to see the results  
17 on page 5. By the way, that's -

18 JUDGE SIPPEL: If I flip the page.

19 THE WITNESS: Yes, page 5 at the  
20 bottom is the results -

21 JUDGE SIPPEL: Yes.

22 THE WITNESS: And then page 6, I

1 think is very interesting. Paragraph 18.

2 JUDGE SIPPEL: Yes.

3 THE WITNESS: I don't know if you  
4 want me to read that out loud, but the  
5 paragraph is about -- but you see, it's about  
6 Philadelphia. Right?

7 JUDGE SIPPEL: Yes, but let me ask  
8 -- before you -

9 THE WITNESS: This is a finding --  
10 this is to an economist, how one would prove  
11 that Comcast's discrimination in Philadelphia  
12 is impairing competition by reducing DBS  
13 penetration. Right? And I'm taking you to  
14 the Appendix, because that was the fastest way  
15 I can get to it. But this isn't just there  
16 for no reason. You have to go into the  
17 report, which is hundreds of pages long, that  
18 finds why do they need to go through this  
19 theoretical exercise? Why do they need to  
20 show empirically that Comcast has killed  
21 competition through its discrimination  
22 strategy in Philadelphia?

1 JUDGE SIPPEL: All right. Now,  
2 was that in response to a question?

3 THE WITNESS: Yes. The question  
4 was, what evidence -- I thought the question  
5 was what evidence -- did the Commission make  
6 a finding that discrimination in Philadelphia  
7 impaired competition. I thought that was the  
8 question. And here's the answer.

9 MR. BURKE: I think what the  
10 question was -- actually, can we read it back?  
11 I think it's good, though. Let's hear what  
12 the original question was, which was not that.

13 (AUDIO PLAY BACK.)

14 BY MR. BURKE:

15 Q The question was where in the  
16 Adelphia Order does the Commission make a  
17 conclusion that Comcast has engaged in  
18 inappropriate discrimination? That was the  
19 question.

20 A Right.

21 Q And I think we got several pages  
22 worth of answer, but I don't think we have a

1 citation to where that finding is in this  
2 order.

3 A Well, I cite to this order in  
4 support of my theories in this report  
5 extensively. And given that the order is 150  
6 pages long, it's going to be very hard for me  
7 to find the finding in words, but what I could  
8 find quickly for you in real time was the  
9 economic support of a finding that Comcast's  
10 conduct has impaired competition in  
11 Philadelphia.

12 Q Isn't, in fact, the conclusion of  
13 the Commission in this case the exact opposite  
14 of what you've said? Didn't they actually  
15 uphold Comcast's conduct in Philadelphia and  
16 find it did not violation the Commission's  
17 orders?

18 A No, I think that's a  
19 mischaracterization, in my opinion, of what  
20 they believe is going on in Philadelphia. The  
21 Commission, this Commission did not want to  
22 challenge what Comcast was doing there, so it

1 gave them a pass on having to share their  
2 affiliated content with satellite providers in  
3 Philadelphia. However, I recall that for  
4 carriers in which they haven't yet contracted  
5 for, that is, wireline competitors that they  
6 have not yet contracted with in Philadelphia,  
7 that they had a duty, they had an obligation  
8 to contract for CSN Philly. That's my  
9 recollection.

10 Q Let's go to Paragraph 163 of the  
11 order, which is on page 75.

12 JUDGE SIPPEL: We're going back to  
13 lawyer territory. 165?

14 MR. BURKE: I'm sorry, 163, Your  
15 Honor. I apologize, page 75. It's Paragraph  
16 163, page 75.

17 JUDGE SIPPEL: Gotcha.

18 BY MR. BURKE:

19 Q Can you read that into the record,  
20 Dr. Singer?

21 A Sure. The entire paragraph?

22 Q Sure.

1           A       Okay. "We accept, however,  
2   applicant's explanation that Philadelphia is  
3   a unique case. The method of delivery in  
4   Philadelphia was not chosen for the purposes  
5   of enabling anti-competitive behavior.  
6   Rather, the programming was delivered  
7   terrestrially before the network was acquired  
8   by Comcast. Accordingly, though we apply the  
9   conditions discussed above to covered RSNs",  
10   you have to go up and see what that means,  
11   "regardless of delivery mode, we do not  
12   require that Comcast Sports Net Philadelphia  
13   be subject to those conditions to the extent  
14   it is not currently available" - this is  
15   important, to the extent - "it is not  
16   currently available to MVPDs." So that is, if  
17   they've already contracted with an MVPD, like  
18   Verizon, my reading of this is that the non-  
19   discrimination provisions, the new protections  
20   that came about from this order would apply.  
21   But this "to the extent that it is not  
22   currently available to the MVPD", that is, if

1 it never contracted with the MVPD, as it has  
2 with DirecTV and Dish Network, that these  
3 protections wouldn't apply.

4 Q So, the Commission found that this  
5 -- that the terrestrial delivery method was  
6 not adopted for the purpose of anti-  
7 competitive behavior in this order. Isn't  
8 that right?

9 A I think they took Comcast at its  
10 word that the reason why Comcast was engaging  
11 in this behavior was for "efficiency reasons",  
12 and I just mention, because you brought it up,  
13 that those offerings, that testimony that  
14 Comcast gave to the Commission is now the  
15 subject of an anti-trust lawsuit that's  
16 occurring in Philadelphia.

17 Q So -

18 JUDGE SIPPEL: Who are the parties  
19 in that lawsuit?

20 THE WITNESS: It's a class of  
21 cable customers in Philadelphia who are suing  
22 Comcast.



1 BY MR. BURKE:

2 Q And that's where you're also  
3 acting as an expert, Dr. Singer. Right?

4 A Yes.

5 Q So, to try to tie this up, you  
6 told us that there were findings in this  
7 decision that said that Comcast engaged in  
8 improper discrimination. I'm still waiting to  
9 have you point out to me where those findings  
10 are.

11 A Oh, I took you to them. That was  
12 Appendix C, and Appendix D, and I will show  
13 you every reference to Appendix C and Appendix  
14 D in the report. So, look, whenever you have  
15 a 150 page report that's written by several  
16 authors, you're going to find conflicting, or  
17 seemingly conflicting opinions. But I know  
18 that the Commission found evidence. Right?  
19 It's right there in Appendix D, you can't run  
20 away from, that Comcast's conduct resulted in  
21 impaired competition in Philadelphia. Your  
22 own expert has submitted expert testimony